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Attorneys for Plaintiff  
UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,	)	CR. NO. 22-00031 DKW
	)	
Plaintiff,	)	GOVERNMENT'S NOTICE OF
	)	INTENT TO INTRODUCE
vs.	)	EVIDENCE PURSUANT TO RULE
	)	404(b)
LINDSEY KINNEY,	)	
	)	
Defendant.	)	
	)	

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**GOVERNMENT'S NOTICE OF INTENT TO INTRODUCE  
EVIDENCE PURSUANT TO RULE 404(b)**

The United States, by and through the undersigned attorneys, hereby submits  
this notice of intent to introduce evidence pursuant to Federal Rule of Evidence  
404(b).

Inextricably Intertwined Conduct

In an abundance of caution, the government hereby notices its intent to introduce in its case-in-chief the following threats, statements, communications, posts, images, recordings, and material posted or sent by or on behalf of defendant via social media:

1. Records and related data at KINNEY\_000183, 293, 316, 782, 786-790, 793-804, 827, 852-866, 868, 871-916, 920-923, 960, and 961;<sup>1</sup>
2. Defendant's conduct as described at J\_KINNEY\_000014;
3. The following records and related data at KINNEY\_001206 (scoped iPhone report):<sup>2</sup>
  - a. Item 1 (chats);
  - b. Items 11-17, 28-39, 42, 45-60, 62, 63, 66, 68-70, 72, 74, and 75 (images);
  - c. Items 82-84 (video); and
  - d. Items 135, 138-149, 152, and 163 (web history);
4. The records and related data from defendant's "cant.stop.cowboy" Instagram account at KINNEY\_001207;

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<sup>1</sup> Records and reports are identified by the Bates numbers used for the production of documents to defendant.

<sup>2</sup> The items and data from the scoped iPhone report are identified by the item number on the "tags" tab sorted by the "type" column in ascending order. The items noticed herein are only those that the government believes could be subject to Rule 404(b) or anticipates that defendant may argue are subject to Rule 404(b); the government intends to offer other items from the scoped iPhone report.

5. The records and related data from defendant's "ioandjustice" Instagram account at KINNEY\_001207; and
6. The records and related data from defendant's Instagram accounts at KINNEY\_001208.

Because the foregoing evidence is "'inextricably intertwined' with the charged offense[s]," this evidence is not other acts evidence subject to Rule 404(b). *United States v. Wells*, 879 F.3d 900, 928 (9th Cir. 2018) ("This exception applies when (1) 'particular acts of the defendant are part of . . . a single criminal transaction,' or when (2) "'other act' evidence . . . is necessary [to admit] in order to permit the prosecutor to offer a coherent and comprehensible story regarding the commission of the crime.'"). Alternatively, the above evidence is admissible pursuant to Rule 404(b) to prove defendant's subjective intent to threaten the victims, his motive for threatening the victims, his opportunity for threatening the victims via social media, his *modus operandi* in threatening the victims via social media, the absence of mistake in committing the charged threats, the lack of accident in committing the charged threats, and defendant's identity in connection with the charged threats.

Other Acts Evidence

The following other acts evidence is admissible pursuant to Rule 404(b) to prove defendant's subjective intent to threaten the victims, his opportunity for threatening the victims via social media, his *modus operandi* in threatening the victims via social media, the absence of mistake in committing the charged threats, the lack of accident in committing the charged threats, and defendant's identity in connection with the charged threats:

7. Defendant's conduct as described in the reports at, and the related records at, KINNEY\_329, 348-355, and 506-751;
8. Defendant's conduct as described in the reports at, and the related records at, J\_KINNEY\_000001-3 and 6-8;
9. Defendant's conduct as described in the reports at, and the related records at, J\_KINNEY\_000004-5, 9, 13, and 18, and KINNEY\_000186-191, 194-198, 202-223, 271-274, and 291-293;
10. Defendant's conduct as described in the reports at, and the related records at, J\_KINNEY\_000010-12 and KINNEY\_259-267;
11. Defendant's conduct as described in the report at J\_KINNEY\_000015; and
12. Defendant's conduct as described in the reports at, and the related records at, J\_KINNEY\_000016-17 and KINNEY\_286-287.

DATED: November 15, 2022, at Honolulu, Hawaii.

CLARE E. CONNORS  
United States Attorney  
District of Hawaii

By: /s/ Craig S. Nolan  
Craig S. Nolan  
Assistant U.S. Attorney

**CERTIFICATE OF SERVICE**

I hereby certify that, on the date and by the method of service noted below, the true and correct copy of the foregoing was served on the following at their last known address:

Served Electronically by CM/ECF:

Cassandra Stamm, Esq.  
Attorney for Defendant  
LINDSEY KINNEY

DATED: November 15, 2022, at Honolulu, Hawaii.

/s/ Craig S. Nolan  
Craig S. Nolan  
Assistant U.S. Attorney